IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 270 of 2006

KAPURI @ GATTU & ANR.
V/S
LRS.OF DAYA & ORS.

Mr. VIJAY KUMAR VYAS for ANAND PUROHIT, for the appellant / petitioner

Date of Order : 6.9.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant. Perused the impugned judgment, so also learned counsel made available for my perusal the pleadings of the parties and evidence on the side of the plaintiff, and also read to me some statements of some defense witnesses.

From overall comprehension of the material shown to me, it transpires that the entire case of the plaintiff is wholly confused, and the case as pleaded is not proved, and what is sought to be proved, does not make out the case of the plaintiff.

The case of the plaintiff briefly is, that there was a plot measuring 100 ft north south, and 60 ft east west, which was partitioned some 40 years ago, and the portion marked as “A B E F” in the site plan, being the northern portion, fell to the plaintiffs' share (share of Verda), and after death of Verda, his son, plaintiff No.2 was visiting Ahmedabad for earning livelihood, and taking

advantage thereof, the defendants have started grabbing his right on the plot, and that, a month before filing of the suit, the plaintiffs were dispossessed, therefore, the suit has been filed for declaration of title and possession. It has also been pleaded that the defendants were depositing the house tax etc., for which plaintiffs were paying share to the defendants.

As against this, from the evidence it is clear, that the plaintiffs are living in a different locality, and there is divergent evidence of the parties, on the question, as to how and when the house, where the plaintiffs are living, was acquired, but then in the plaintiffs' evidence, there is nothing, which may establish, that this precise portion “A B E F” fell to the share of the plaintiff, and that the plaintiffs were dispossessed from this portion a month before filing of the suit, rather admittedly i.e. as admitted by the plaintiff No.1, that she was not allowed to raise construction over the plot, and it has also come in the Commissioner's report, as found by learned Courts below, that there is sizable construction of the other defendants over this portion of the plot, apart from the fact, that measurements of the plot do not tally with the measurements given out in the plaint. Likewise, there is no evidence on the side of the plaintiff to show, that the plaintiffs were paying the share of the house tax etc., which admittedly is deposited by the defendants.

In other words, the plaintiff has clearly failed to prove that the portion "A B E F" came to the share of the plaintiff in partition, and was in their possession, and that they had been dispossessed, a month before filing of the suit. On the other hand, it is more than clear, that the plaintiffs had been excluded from the property in question, even if they had any right therein, decades before filing of the suit.

Thus, in my view, the learned Courts below cannot be said to have gone wrong in dismissing the plaintiffs' suit, may be for different reasons.

The appeal thus, does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

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